

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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March 5, 2003

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GSBCA 16017-RELO

In the Matter of WAYNE A. WETZEL

Wayne A. Wetzel, Ontario, OR, Claimant.

Candace L. Thatcher, Chief, Accounts Payable Branch, Bureau of Land Management, National Business Center, Denver Federal Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

**GOODMAN**, Board Judge.

Claimant, Wayne A. Wetzel, is an employee of the Department of the Interior, Bureau of Land Management. He has requested that this Board review the agency's determination which denied reimbursement of costs he incurred when he sold his home in East Helena, Montana.

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## Factual Background

Claimant was issued orders dated May 29, 2002, to relocate in July 2002 from his old permanent duty station (PDS) in Lewistown, Montana, to Vale, Oregon. In September 2002 claimant sold a house in East Helena, Montana, and submitted a claim for reimbursement of costs incurred in the sale of the house. The agency denied the claim on the basis that his East Helena home was not the residence from which he commuted daily to and from work.

In support of its decision, the agency states that East Helena is located approximately 200 miles from Lewistown. The agency hired claimant as a new hire in February 2002, and claimant rented a room in a private residence in Lewistown and drove to work daily from there. While claimant worked in Lewistown, his family continued to reside in the East Helena home. He returned to his home in East Helena on weekends, and occasionally at other times when he had a special engagement.

## Discussion

When an employee transfers in the interest of the Government from one official station to another for permanent duty, the agency is to reimburse the employee for expenses of the sale of the employee's residence at the old official station. 5 U.S.C. § 5724a(d) (2000).

The Federal Travel Regulation (FTR) implements this statute. The version of the FTR which was applicable at the time of claimant's relocation reads as follows:

Sec. 302-11.100 For which residence may I receive reimbursement for [sic] under this subpart?

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

41 CFR 302-11.100 (2002).

Prior versions of the FTR did not contain the phrase "on a daily basis," but only contained the requirement that the employee "regularly commute." See, e.g., 41 CFR 302-1.4(k) (2001). This Board consistently interpreted the requirement to regularly commute to mean a daily commute, not a weekly or monthly commute. Richard S. Citron, GSBICA 15166-RELO, 00-1 BCA ¶ 30,788; David Morrell, GSBICA 15229-RELO, 00-1 BCA ¶ 30,899; Ezzat Asaad, GSBICA 14484-RELO, 98-1 BCA ¶ 29,667. The wording of the FTR applicable at the time of claimant's transfer now plainly sets forth this interpretation by requiring that the employee commute from the residence "on a daily basis" in order to be entitled to reimbursement for expenses incurred in the sale.

Claimant asserts that "some daily (as opposed to weekly or monthly) commutes" from the East Helena home did occur, and that this occurrence is sufficient to meet the requirement that claimant commuted daily. However, claimant's description of his commuting schedule is clear that he did not commute daily to work from his home in East Helena.

Claimant notes that his travel orders authorize payment of costs for his relocation from East Helena, Montana, the home where his family resided, to his new duty station, rather than from his old PDS of Lewistown. This fact does not overcome the requirement that he must commute daily from the residence in order to be reimbursed costs for its sale.

Claimant alleges that the agency's knowledge that the residence where his family lived was in East Helena, and the agency's urging that he use a real estate agent to sell his home so that the agency would not incur additional costs of using a relocation service, led him to believe that he could and would be reimbursed for the costs of selling his home in East Helena. Even if this was the belief of both the claimant and the agency at the time, the Government may not reimburse claimant for such costs, as he did not commute from the home on a daily basis. In a situation similar to claimant's, we held that a transferred employee was not entitled to reimbursement when he was erroneously advised that he would receive reimbursement for expenses incurred in the sale of a home from which he did not commute daily to work. Albert R. Wilcox, GSBICA RELO-15776, 02-2 BCA ¶ 31,864.

Another issue raised by claimant is that his official duty station of Lewistown is a remote area, and he had difficulty finding suitable housing there. The agency asserts that Lewistown has not been designated as a remote area. The concept of "remote area" appears in a prior version of Chapter 302 of the FTR, which read in relevant part:

Official station or post of duty. The building or other place where the officer or employee regularly reports for duty. (For eligibility for change of station allowances, see §§ 302-1.3 and 302-1.7). With respect to entitlement under this chapter relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official.

41 CFR 302-1.4(k) (2001).

The version of Chapter 302 of the FTR which is applicable to claimant's relocation does not contain the above definition of official residence, but does contain the following provision upon which claimant relies.

May we waive statutory or regulatory limitations relating to relocation allowances for employees relocating to/from remote or isolated locations?

Yes, the agency head or his/her designee may waive any statutory or regulatory limitations for employees relocating (to/from a remote or isolated location) when determining that failure to waive the limitation would cause an undue hardship on the employee.

41 CFR 302-2.106 (2002).

Because the agency has determined that Lewistown, Montana, is not a remote or isolated location, and claimant has not shown that this determination was unreasonable, this provision is not applicable to claimant's situation.

#### Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge